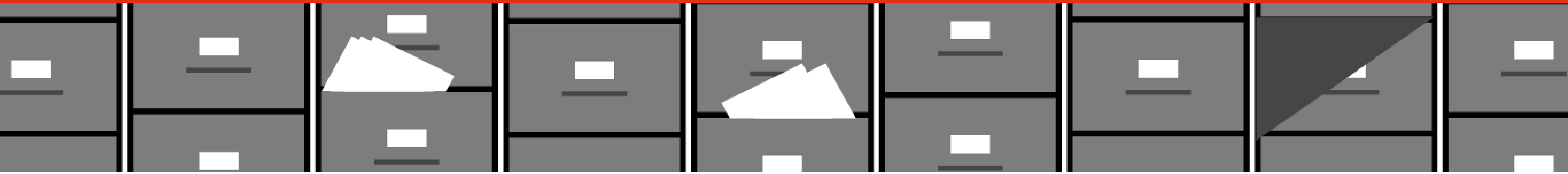
PwC Vietnam NewsBrief

New transfer pricing regulations released



At a glance...

6 November 2020

On 5 November, the Government issued Decree 132/2020/ND-CP, setting out new rules on transfer pricing in Vietnam.

Decree 132 takes effect from 20 December 2020, but applies for the financial year 2020.

Decree 132 replaces the existing TP Decree 20 issued in 2017, and we outline some of the key changes below.

Some key changes

The use of commercial databases for comparables

- Commercial databases are explicitly referred to as a valid source of comparables for both taxpayers and tax authorities.
- As well as accepting commercial databases as a source for conducting benchmarking studies, Decree 132 also limits the use of internal databases (i.e. "secret" comparables) when the tax authorities assess the arm's length nature of taxpayers' related party transactions. Importantly however, the tax authorities retain the right to use their internal databases for assessing and imposing TP adjustments where a taxpayer is deemed not to have fully satisfied the relevant TP compliance requirements.

Some easing of the tax deductibility cap on interest

- The cap on the tax deductibility of interest increases from 20% to 30% of EBITDA. The cap applies to net interest expense (i.e. interest expense can be offset by interest income before being compared with the cap).
- Non-deductible interest can be carried forward to subsequent tax years and deducted if the net interest expense/EBITDA ratio is below 30% in those years. The time limit for such carry forward is five years.
- Certain types of financing are now excluded from the cap, including official development assistance loans, various preferential loans made by the government, and loans made for implementing national programs and state social benefit policies.

These provisions on the deductibility cap were already enacted under Decree 68 issued earlier this year.

Tightening of the acceptable arm's length range

- The acceptable arm's length range is raised to span the 35th percentile to the 75th percentile (tightened from the 25th to the 75th percentile range under Decree 20). As such, the minimum threshold is raised by 10%.
- Therefore, taxpayers will need to re-assess their transfer pricing positions effective financial year 2020 to ensure that their margins fall within this tighter range. Given these new rules apply for all of calendar 2020, this may pose significant challenges to those companies which have already achieved margins year to date which fall below the 35th percentile.

New rules on country by country reports

Some major changes include:

- For a Vietnamese Ultimate Parent Company with annual global consolidated revenues of at least VND18,000 billion, the CbCR is required to be filed with the tax authorities within 12 months from the fiscal year-end.

- For foreign owned companies here with an overseas UPC, the CbCR is not required to be filed locally in case such CbCR is made available to the Vietnamese tax authorities through the automatic exchange of information ("AEOI") procedure.

- A company is however required to submit the CbCR locally within 12 months from the year-end in the following circumstances:

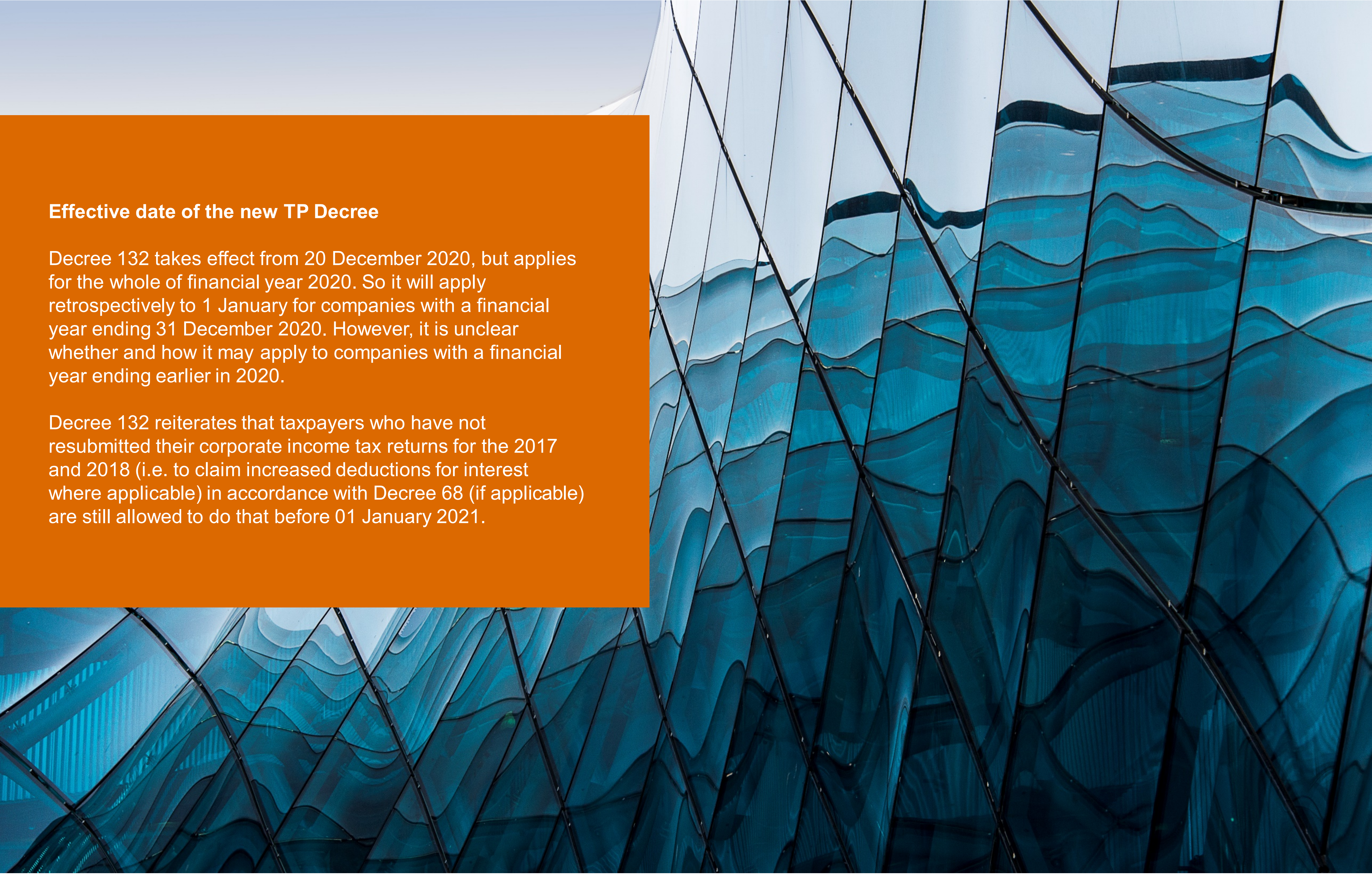
  - The jurisdiction, where the UPC resides, has a tax treaty in force with Vietnam but has not signed the Multilateral Competent Authority Agreement ("MCAA") on the AEOI with Vietnam.
  - The jurisdiction, where the UPC resides, has signed the MCAA, but has suspended the AEOI mechanism, or the CbCR has not been provided automatically to Vietnam.
  - Where an overseas group has more than one subsidiary in Vietnam, the UPC has to notify the Vietnamese tax authorities of the subsidiary that is appointed to file the CbCR on behalf of the UPC.
  - If a company here has an overseas UPC that is not obliged to file a CbCR in its respective jurisdiction, Decree 132 states that international tax treaties shall apply. This intent here is unclear, and clarification is required.

Additional exemptions from the three-tiered TP documentation requirement

The exemptions are broadened to include where:

- Taxpayers only have domestic related party transactions; and
- Taxpayers and their related parties have the same tax rate; and
- None of the parties enjoy tax incentives.

This provides a welcome reduction of the TP compliance burden for many companies.



Effective date of the new TP Decree

Decree 132 takes effect from 20 December 2020, but applies for the whole of financial year 2020. So it will apply retrospectively to 1 January for companies with a financial year ending 31 December 2020. However, it is unclear whether and how it may apply to companies with a financial year ending earlier in 2020.

Decree 132 reiterates that taxpayers who have not resubmitted their corporate income tax returns for the 2017 and 2018 (i.e. to claim increased deductions for interest where applicable) in accordance with Decree 68 (if applicable) are still allowed to do that before 01 January 2021.

Contact us

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